The Solicitors' Journal

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CURRENT TOPICS

Chancery and the Lord Chancellor

THE LORD CHANCELLOR sat in the Lord Chancellor's Court on the first day of the Michaelmas term, after attending divine service at Westminster Abbey, and actually granted an unopposed application which was made there. It is many a decade since the Lord Chancellor's work consisted mostly of listening to cases in the Court of Chancery. It will be remembered that it was the Lord Chancellor himself who conducted the interminable proceedings attended by various unhappy members of the Jarndyce family in Dickens's "Bleak House." With the reform of the Court of Chancery, Vice-Chancellors were appointed to cope with the work, and the Judicature Act, 1875, put the finishing touches, as it were, to a system from which the Lord Chancellor's office appeared, in all but name, to be a thing apart. One likes, however, to be reminded of history from time to time, and it is clear that the present Lord Chancellor shares that interest. He said that he regretted that the manifold duties of his office were such as to render it impossible for him to exercise, except upon the rarest occasions, that particular part of his jurisdiction, but he thought it proper to take the opportunity of reminding the profession and the public of the position which he held and which he was very proud to hold. He said that he had had the opportunity during his time at the Bar of practising in the Chancery Division and he knew that the judges of that Division were upholding its great tradition. The SOLICITOR-GENERAL and Mr. CHARLES HARMAN, K.C., replied on behalf of the Bar.

The Solicitors' Benevolent Association

THE work of the Solicitors' Benevolent Association must always command the attention and the active support of solicitors. The *Law Society's Gazette* for September draws attention not only to the maintenance which the Association has provided in the past for the dependants of members and non-members who have died, but also to the present assistance which it is giving to the children of solicitors who have died, in order to train them for the occupations and professions that interest them. The Cecil Allen Coward Educational Fund is limited in its use to the children of members, and the *Gazette* gives interesting examples of the work of the Fund and of the Association in helping the children of both members and non-members. The Law Society also helps, but some of the children do not follow the law. One boy decided, in view of the lack of man-power and the largeness of tips, to become a railway porter. Large numbers of boys wish to join the Navy or Merchant Service, and a girl, aided by the Cecil Allen Coward Educational Fund, took a brilliant medical degree and now holds a good hospital appointment. On the whole, however, the girls decide to become secretaries, though a good proportion have become teachers, nurses and cooks. One qualified as a barrister. Solicitors need no urging to support the cause which is their own.

Service of Process on Sunday

HIS HONOUR JUDGE EARENGEY drew attention, on 14th October, to the fact that "service of a summons on a Sunday is not considered 'good,' at least in the legal sense." The plaintiff in the case before him was told that he would have to begin all over again. Most solicitors and firms of process servers are well aware of this fact. Although religious observance may not be what it was when the Sunday Observance Act, 1677, was passed, most people still feel that Sunday is a day apart from the rest of the week, which human beings, whether by divine ordinance or free choice, seek to make free from mundane thoughts and deeds. Few things more mundane can be imagined than the service of a summons, and consequently it was one of the matters prohibited by the 1677 Act. An examination of s. 6 reveals a fact which is perhaps not so well known. It provides that "no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree (except in cases of treason, felony or breach of the peace), but, the service . . . shall be void to all intents and purposes whatsoever: and the person or persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all." Whether the amount of damages for such a wrong would be enough to justify an action or counter-claim must be judged in the light of individual cases, but it is not difficult to imagine circumstances in which such damages might be substantial.

Costs against the Prosecution

DISMISSING a charge against a journalist of wilful obstruction of a police officer in the execution of his duty, Mr. G. G. RAPHAEL, on 13th October, said: "I have been unable to come to a conclusion which satisfies me that the police here were in the right. This is far from coming to any conclusion which is adverse to the police, and I make no such comment . . . This charge has been preferred, and having failed and put the defendant to some cost to be defended I think he is entitled to costs. For that reason, and for no other, I shall award him seven guineas costs." It is devoutly to be wished that other magistrates will follow this commendable lead given by Mr. Raphael. How often does one find oneself obtaining an acquittal in a case in which, while the defendant may

not be able completely to prove absence of reasonable and probable cause and malice so as to succeed in an action for malicious prosecution in a civil court, it is nevertheless common justice that the unsuccessful prosecutor should pay the successful defendant's costs. Not lay justices only, but some stipendiary magistrates and Metropolitan police magistrates also seem to think that they have an unfettered power as to costs which they may wield in an arbitrary manner. This is not so. The discretion given by s. 18 of the Summary Jurisdiction Act, 1848, to order the prosecutor to pay to the defendant "such costs as . . . shall seem just and reasonable," is a judicial discretion which must be exercised judicially and with due regard to the rights and wrongs of the matter. The question whether the police or any other prosecutor had good cause for initiating the proceedings is not the only matter which must be taken into account.

Changes of Name

THE tremendous increase in divorce and the decreased respect in which marriage has been held in recent years have led to a practice among women of changing their names. Solicitors are frequently consulted on the subject, and they usually advise that if names must be changed, the formalities of a deed poll avoid the main legal complications. Judges have rightly from time to time administered verbal castigation to women who, while living with married men whose wives are still living, seek to arrogate to themselves the names of the lawful wives, with consequent inconvenience and distress to innocent parties. When such clients, who would be deemed guilty parties in any future—one might almost say, nowadays, inevitable—divorce cases, approach solicitors, it is the duty of the latter to offer some warning as to the strong judicial remarks that may be made at a future date as to their conduct. The ARCHBISHOP OF CANTERBURY added his voice at a meeting of the Upper House of the Convocation of Canterbury, on 16th October, in condemning this growing practice. The BISHOP OF NORWICH said that the practice had grown enormously since the National Registration Act and food rationing. The BISHOP OF WINCHESTER then requested the Archbishop of Canterbury, as President of the Upper House, to consider how best the practice could be stopped, either by promotion of fresh legislation in Parliament, or by other means. The evil is grave enough to require legislation, and in our view such legislation can be drafted and carried into practice with the same lack of difficulty as the legislation restricting the choice of name of a limited company.

Unpaid Building Labour and the Control

IN the eyes of the law all are equal, at any rate in countries subject to the rule of law. This must mean that the butcher, the farmer, the grocer and the dairyman are all subject to the same rationing schemes as the rest of the community. It may be argued that this rule applies also to the painter and decorator, and that although in general a person should not be asked to compute the cost of his own labour for the purpose of ascertaining whether he needs a licence to paint his house pursuant to the Control of Building Operations (No. 8) Order, 1947, a builder or decorator or even an odd-job man is in a different position in the eyes of the law as to the skilled labour which he provides even for his own domestic purposes. At the Stratford Magistrates' Court, on 15th October, the borough accountant for Walthamstow said that if a person wished to paint or repair his own house it was incumbent upon him to apply for a building licence, as the council took into consideration the value of the labour which a man put into the work in addition to the value of materials to be used. For example, if paint, etc., was costing about £5 it might well be that the man's own labour would increase the cost to over the £10 limit so that a licence was necessary. From 1st February, 1947, any work carried out by unpaid labour in excess of the "free" limits has been subject to licence, but at the time of the making of the No. 8 Order it was officially recommended in Circular 8/47 that where a local authority is satisfied that an owner has the materials in his possession and does not propose to use any paid labour, a licence should not ordinarily be refused. One wonders what value local councils put upon the labour of persons doing a skilled job which they have never before attempted. One may even go further, and wonder why such work should be subject to a rationing order.

Recent Decisions

In a case before the Divisional Court (the LORD CHIEF JUSTICE, and HUMPHREYS and SINGLETON, JJ.), on 14th October, it was held that the mother of an illegitimate child could not, after having signed a document stating that she understood the effect of an adoption order and that it permanently deprived her of her child, succeed in an application to have the child returned to her after the making of the order, even though her parents had threatened to stop her allowance of 15s. a week if she refused to have the child adopted and omitted to tell her that she had been offered 12s. 6d. a week by the education authority for the maintenance of the child. The court held that this did not amount to coercion in law, and as the foster parents had had the child for two years, it would be disregarding their interests and those of the child to have the infant taken away from them. The Adoption of Children Act, 1926, the court held, introduced entirely new principles into English law, and it provided various safeguards, so that after the making of an order the child was looked upon as if it was the natural child of the adopted parents.

In *Wildhack* v. *London Passenger Transport Board and R. Mansell, Ltd.*, on 16th October (*The Times*, 17th October), ATKINSON, J., in awarding £1,786 damages and costs against the second defendant, expressed the hope that the Minister of Pensions would not reduce the army disability pension of the plaintiff, and added that as the damages included nothing for loss of earning power, it would be grossly unfair to reduce the pension because of damages given for pain and suffering.

In *R.* v. *Sampson*, on 15th October (*The Times*, 16th October), the Court of Criminal Appeal (the LORD CHIEF JUSTICE, and HUMPHREYS and SINGLETON, JJ.), dismissed an application for leave to appeal against sentence in the case of a man who had been convicted and sentenced, at borough quarter sessions, to three years' penal servitude, after having been convicted and sentenced by magistrates' courts on numerous occasions to terms of three months' and six months' imprisonment for stealing. The court commented that he ought to have been given the sentence of penal servitude long previously, and that magistrates should remember that it was their duty to inquire into prisoner's character and antecedents before they consented to deal with a case summarily, and they must exercise a judicial discretion in coming to a decision in the matter. If the character of the defendant was good no harm would be done by the magistrates knowing that fact before they adjudicated. On the other hand, if they were told that the man had a very bad character, equally no harm would be done, because it would then be their duty to send him for trial.

In *Edwards and the Receiver for the Metropolitan Police District* v. *Smith*, on 16th October, CROOM-JOHNSON, J., held that the defendant to an action for damages for personal injuries arising out of alleged negligence, who himself counterclaimed for damages alleged to have arisen through the negligence of the plaintiffs, was entitled to succeed, because the collision out of which the action arose was wholly caused by a police driver driving a London police car at 50 miles per hour with dazzling lights, and there was nothing to justify driving in such a manner, even in response to the special telephone call 999.

"The Solicitors' Journal"

As from 1st January, 1948, the annual subscription rate for THE SOLICITORS' JOURNAL for all territories outside the British Isles will be reduced from £3 5s. to £3. There will be no change in the inland rate, which remains at £3.

THE POWER TO CHASTISE

(CONTRIBUTED)

TIME and again complaints are made by parents that their children have received excessive corporal punishment at school. It has been said that the only justification a bench of justices can allow to a schoolmaster for beating a pupil is the commission of an offence. If the boy cannot prove his innocence, then the question arises as to whether the punishment was excessive.

The Staffordshire Education Committee recently decided by a majority vote—21 to 19—not to reprimand an assistant master at a Grammar School, who used a rope to punish twenty-eight boys. They also decided by a larger majority that the master's action did not constitute "brutal flogging," nor even "flogging." The meeting, however, ruled that teachers should be told that a rope must not be used; that approval of the head teacher, or senior teacher in charge, must be given; and that all cases should be recorded.

In *R.* v. *Hopley* (1860), 2 F. & F. 202, Cockburn, C.J., in his address to the jury stated: "By the law of England a parent or a schoolmaster (who for this purpose represents the parent and has the parental authority delegated to him) may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable. If it be administered for the gratification of passion or of rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's power of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life or limb, in all such cases the punishment is excessive, the violence is unlawful, and if evil consequences to life or limb ensue, then the person inflicting it is answerable to the law, and if death ensues it will be manslaughter."

R. v. *Hopley* was an extreme case, the facts showing that a schoolmaster, on the second day after a boy's return to school, wrote to the parent proposing to beat the boy severely to subdue his alleged obstinacy, and on receiving the father's reply assenting, beat the boy for two hours and a half secretly in the night with a thick stick until he died. On a charge of manslaughter, he was found guilty and sentenced to four years' penal servitude.

The difficulty which may be experienced by a bench of magistrates in coming to a decision whether in certain circumstances the punishment given is reasonable or not is illustrated by a case which came before a bench in 1933, where allegations of brutality against a headmaster were made by a boy's mother. It appeared that the boy, whilst walking in a file at the school, was pushed in the ribs by another boy. He thereupon swung round and struck the other boy in the face, knocking out a tooth which was already loose. For this action the headmaster caned him, counsel for the prosecution alleging that the boy was flogged until he was sick, and that hours afterwards he was in a state of delirium. In cross-examination the boy admitted that he had once previously been caned for horse-play and that the headmaster had told him not to bully other boys. The headmaster said that he applied the cane only four times with very moderate force. The medical evidence for the prosecution was that six contusions were visible, consistent with the boy having received four cuts, and for the defence that three marks were found on the boy, all very trivial. Counsel for the defence asked what would be the position of the school which acquired the reputation for bullying and the headmaster did nothing whatever? The proper way to stop bullying was with the cane. The three magistrates having considered in private for eighty minutes, the chairman said that by a majority decision the case would be dismissed. No costs were awarded.

In *R.* v. *Newport Justices; ex parte Wright* [1929] 2 K.B. 416, the justices held that a teacher may lawfully punish a boy under sixteen for smoking a cigarette in a street contrary to school rules. They refused to state a case, and the matter came before the then Lord Chief Justice, Lord Hewart, and Avory and Swift, JJ., on a rule *nisi* for an order in the nature of a mandamus to justices to state a case. In upholding the justices, the Lord Chief Justice quoted Collins, J., in *Cleary* v. *Booth* [1893] 1 Q.B. 465, as follows: "It is clear law that a father has the right to inflict reasonable personal chastisement on his son. It is equally the law, and it is in accordance with very ancient practice, that he may delegate this right to the schoolmaster. Such a right has always commended itself to the common sense of mankind. It is clear that the relation of master and pupil carries with it the right of reasonable corporal punishment. As a matter of common sense, how far is this power delegated by the parent to the schoolmaster? Is it limited to the time during which the boy is within the four walls of the school, or does it extend in any sense beyond that limit? In my opinion the purpose with which the parental authority is delegated to the schoolmaster, who is entrusted with the bringing up and discipline of the child, must to some extent include an authority over the child while he is outside the four walls. It may be a question of fact in each case whether the conduct of the master in inflicting corporal punishment is right. Very grave consequences would result if it were held that the parent's authority was conclusive up to the door of the school and that then, and only then, the master's authority commenced."

"These observations," said Lord Hewart, "seem to me to apply very closely to the present case. As the justices rightly applied the law, the question was one of fact whether the conduct of the master was right." The two other judges concurred.

The power of the father to chastise his children is derived, of course, from the *patria potestas* of the Romans which gave the father the power of life and death over his children. Some ten years ago, a London father had occasion to chastise his young daughter aged seventeen. To use his own words, he "spanked her in the usual homely way over his knee" because she kept late hours. The question of the spanking was not before the court, but that a father has legally such a right, so long as his daughter is an infant and under his control, is beyond doubt.

A writer on the subject says: "The right of the father to restrain and control the acts and conduct of his infant child, and to inflict personal chastisement for disobedience to his orders is undoubted in law, but the right shows signs of weakening with regard to older children. A father would be hard put to it to justify before a court a blow to a daughter of nineteen or twenty unless her conduct were utterly outrageous; and, practically, if she decides to remove herself from his control there is no means for him to enforce it."

It was decided in a case in 1921 that an elder brother, who at his father's request and during his absence at the war, assumed control of the younger children, would be entitled while his father was at the war to exercise the lawful powers of parent or guardian which include in some cases moderate and lawful chastisement. An elder brother has no legal right, however, to strike a younger brother merely because he is cheeky.

Opinions will always be divided as to whether the use of the cane at school is a good or a bad thing. Modern parents seem inclined to the belief that physical pain as a deterrent is harmful, and in most cases they are strongly of opinion that the decision should be left to them and not to the schoolmaster. It seems doubtful, however, if discipline could properly be maintained in a school unless the teachers could use the powers which the common law gives them.

In 1933, Eve, J., in the Chancery Division, granted an injunction to restrain the proprietress of a nursery school at Hampstead from carrying on the school so as to cause a nuisance by noise on the part of the children. The judge said he hoped the injunction would not be exercised

oppressively. "There is no doubt," he said, "that the parents who have sent children to the school feel that it is a school which benefits them. I do not accept the suggestion that it is a 'go-as-you-please' school." The facts of the case showed that the policy at the school was to interfere with the children as little as possible. "I have never found," said the proprietress, "that hurting a child is satisfactory. Physical punishment is always harmful."

DIVORCE LAW AND PRACTICE

PROOF

THE subject of the onus of proof having been considered in the previous article in this series (*ante*, p. 539), it may be useful to follow this up by seeing how far recent cases have gone in dealing with the question as to what degree of proof is required in any particular branch of divorce law.

(1) *Where adultery is alleged*

In *Ginesi* v. *Ginesi* [1947] 2 All E.R. 438; 91 SOL. J. 519, the Divorce Divisional Court had before it an appeal from a finding by justices that a wife, in whose favour a separation order had been made, had committed adultery and the discharge by them of the order upon this ground upon the application of the husband. The finding of the justices on this issue was expressed by them in these terms: "Well, it may be that they had not committed adultery; there is just the possibility that they had not, but the probability that they had is so great that, in our opinion, we should hold that adultery has been proved," and it was held in allowing the appeal that in coming to this conclusion the justices had not been alive to that standard of proof which is required, and the original order was restored. In his judgment, Hodson, J. after stating that it was a matter of history that in matrimonial cases, adultery having been described as a quasi-criminal offence, the standard of proof was a high one, referred in this connection to the language of Lord Merriman, P., in giving the judgment of the Court of Appeal in *Churchman* v. *Churchman* [1945] P. 44, where he says, at p. 51: "The same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so called." He then stated that he was forced to the conclusion, from the language which they used, that the justices dealt with the case without that standard in mind, but that they seemed to have had in mind rather the proper attitude to adopt in an ordinary civil case, where merely the preponderance of evidence, or even the balance of probability, might probably be taken into account. In agreeing, Barnard, J., stated that the justices applied the wrong test, the test which might well be applicable in a civil action, instead of the very strict test which was required in the Divorce Court; and that if they had applied the right test, the only course they could have taken would have been to find that the charge of adultery had not been proved beyond all reasonable doubt.

(2) *Where the King's Proctor shows cause*

This, therefore, being the strict standard of proof which it has been laid down should be applied in a suit between a husband and wife in considering whether or not a charge of adultery has been made out, it would seem difficult to reconcile the above-quoted observations of Lord Merriman with the judgment in *Hulse* v. *Hulse and Tavernor, The Queen's Proctor intervening* (1871), L.R. 2 P. & D. 357, which concerned the question of the proof of the identity of the petitioner in an intervention by the Queen's Proctor. There the petitioner had been granted a decree *nisi* on the ground of his wife's adultery, and the Queen's Proctor intervened to show cause why the decree *nisi* should not be made absolute, upon the ground that the petitioner had been guilty of adultery subsequent to the decree *nisi* being granted. In support of this plea he called evidence to show that a person, passing by the name of the petitioner and giving a card with the name of the petitioner printed upon it, had been guilty of the alleged acts of adultery at the time and place and with the person specified in his plea, which allegation was denied by the petitioner, who, however, called no witness but submitted that no evidence of identity had been given. In his judgment accepting this evidence of identity and reversing the decree *nisi* and dismissing the petition, the Judge Ordinary held that, the petitioner having had notice of the time when, the place where, and the person with whom he was alleged to have committed adultery, and the above-mentioned evidence having been given, there was *prima facie* evidence of identity, and the petitioner was bound to give evidence to rebut it, and in the absence of such rebutting evidence he found the petitioner guilty. He stated that it was not disputed that the evidence was sufficient to establish the charge of adultery if there was proof of identity, and that the strong inference was that the man in question was the petitioner, although the proof was not as clear as would be required if it were a question of identity arising in a suit between husband and wife. It is to be noted that in coming to this conclusion the Judge Ordinary stated that the issue raised in the case before him differed from the issue of adultery raised in a suit by wife against husband, or husband against wife, where one was claiming a divorce on the ground of the adultery of the other; that in such a suit, when undefended, or even if defended (for collusion was possible) it was necessary clearly to prove the identity of the respondent in order to establish the adultery, but that in the case before him the Queen's Proctor was intervening in the discharge of a public duty to show cause against the decree *nisi* being made absolute, and that in such a suit there was no reason to doubt that the petitioner would contest the matter and refute the evidence if he could. It is difficult, however, to see why a lesser standard of proof should be accepted in establishing a charge of adultery in a plea by the King's Proctor showing cause against the grant of a decree *nisi* than would be required in establishing a similar charge by a husband against wife, or wife against husband. It would be interesting to see whether this authority would be followed at the present day in the light of the recent decisions referred to above, and it is submitted with respect that it would not.

(3) *Where a criminal offence is alleged*

With regard to the standard of proof which is required where the matrimonial offence which is alleged amounts in law to a criminal offence, reference may be made to *Statham* v. *Statham* [1929] P. 131. There a wife petitioned for a divorce alleging, *inter alia*, an act of sodomy committed on her by her husband, and it was held by the Court of Appeal, reversing the finding of a jury before Hill, J., that the same cogent evidence was required to overcome the presumption of innocence as in a criminal case, and that the act charged must be proved beyond reasonable doubt. Further, that the wife being an accomplice the same principles should be applied as in a criminal case, and, as in such a case, that the same warning should be given that it would be unsafe to convict upon the uncorroborated evidence of the wife; but that, should such a warning be given and the jury still find that the offence had been committed, the court would not disturb the verdict merely on the ground of absence of corroboration (and see *D.B.* v. *W.B.* [1935] P. 80).

(4) *Where a petitioner seeks to satisfy the court that no collusion or connivance exists*

In those cases in which the circumstances are such as to raise a suspicion of collusion or connivance sufficient to overcome the provisional presumption of innocence in such a case so that the petitioner is left with the legal burden of negativing collusion or connivance, this burden of proof has not been clearly defined. It may be noted that in *Emanuel* v. *Emanuel* [1946] P. 115, where a petitioner failed to discharge this legal burden in a case of collusion, Denning, J., in his judgment merely said that at the end of the case he had on all the evidence to say whether he was satisfied that the petition was not prosecuted in collusion

with the respondent, and that he was not satisfied and on that ground he dismissed the petition. It is submitted, however, that this burden on a petitioner is only to satisfy the court of the probability of his innocence, and that it does not rest upon him to satisfy the court as to this beyond all reasonable doubt, as would be the case if the burden rested upon the prosecution (cf. a similar case in criminal law where the onus is cast upon a defendant by statute or order to prove a negative averment: *R.* v. *Ward* [1915] 3 K.B. 696; *R.* v. *Carr-Briant* [1943] 2 All E.R. 156; and where a defendant seeks to prove insanity: *Sodeman* v. *R.* [1936] 2 All E.R. 1138).

COMPANY LAW AND PRACTICE

AUTOMATIC RE-ELECTION OF RETIRING DIRECTORS

TABLE A of the Companies Act, 1929, provides for the retirement by rotation at each annual general meeting of one-third of the directors for the time being, and goes on to say (cl. 76) that "the company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office." The result of this provision for automatic re-election is that a retiring director will be re-elected where no resolution is passed in regard to his re-election or the filling of the vacancy; but it appears that where a motion to re-elect him is defeated but no valid resolution is passed to elect somebody in his place the provision for automatic re-election does not operate. Otherwise you would have the somewhat absurd result that although the majority of shareholders in whom the power of re-election resides have explicitly refused to re-elect the retiring director, such majority must nevertheless be deemed to have exercised their voting power in a directly contrary sense to that in which they did in fact exercise it and to have re-elected the retiring director (see *Robert Batcheller & Sons, Ltd.* v. *Batcheller* [1945] Ch. 169).

The article providing for the automatic re-election of retiring directors is quite commonly in a form which is not the same as that of cl. 76 of Table A. After providing that the company at the general meeting at which a director retires may fill up the vacated office, it is provided that "if at any meeting at which an election of directors ought to take place" the place of the retiring director is not filled, he is to be deemed to have been re-elected. This is the form, so far as the words in inverted commas are concerned, of the 1908 Table A (cl. 82). It has, I think, been generally assumed that this article applies—as cl. 76 of the 1929 Table A clearly does—to the annual general meeting at which retirement by rotation takes place. But in *Grundt* v. *Great Boulder Proprietary Gold Mines, Ltd.* [1947] 2 All E.R. 439 (p. 572, *infra*), it was held that this was not so. There the articles provided in the usual way for the retirement of one-third of the directors at each annual general meeting and empowered the company to fill up the vacated offices; and, by art. 102, "if at any general meeting at which an election of directors ought to take place, the place of any director retiring by rotation is not filled up, he shall, if willing, continue in office until the ordinary meeting in the next year." P, having retired by rotation, was proposed for re-election, but the resolution was defeated. No resolution having been passed to elect a director in his place, P claimed that by the operation of art. 102 he continued in office. Wynn Parry, J., held that this was not so. Article 102 only applied if the general meeting was one at which "an election of directors ought to take place"; and the only occasion on which an election of directors ought to take place was when the number of directors, through a director retiring by rotation or other circumstance, was reduced to less than the minimum fixed by the articles. The retirement of P still left the number of existing directors above the minimum required by the articles, and accordingly the annual general meeting at which P retired was not a meeting "at which an election of directors ought to take place"; therefore art. 102 had no application and P could not rely on its provisions as having the effect of continuing him in office. It was argued that as the articles also provided that the business of an annual general meeting should be, *inter alia*, to elect directors in place of those retiring by rotation, there was an imperative direction to the annual general meeting to elect directors in place of those retiring in rotation; and consequently that that meeting was a meeting at which "an election of directors ought to take place." The learned judge held, however, that these provisions were not mandatory, but simply conferred power on the meeting, if it thought fit, to elect directors, just as the inclusion in the article, among the items of business for the annual general meeting, of the declaration of a dividend did not require, but only empowered, the meeting to declare a dividend.

I have said that it has been generally assumed that where in the *fasciculus* of articles dealing with retirement by rotation there is an article similar to art. 102, that article applies to the case where the annual general meeting at which retirement takes place is empowered, though not necessarily directed, to fill up the vacancy; this assumption certainly seems to have been made in some of the reported cases (see, e.g., *Spencer* v. *Kennedy* [1926] Ch. 125; *Holt* v. *Catterall* (1931), 47 T.L.R. 332; and the *Batcheller* case, *supra*, and see also *Re Great Northern Salt Works* (1890), 44 Ch. D. 472, at p. 482). But the decision in the case under discussion now shows that such an assumption is not correct and that the phrase "a meeting at which an election of directors ought to take place" has in the ordinary case a very limited application; it refers only to a meeting at which there is an obligation to elect directors. In the present case the court found that the only occasion on which such an obligation existed was when the number of directors had fallen below the minimum required by the articles; and it would, I suppose, be true to say that under the articles of association of most companies that would be the only occasion when an election of directors "ought" to take place, the filling of vacancies in other circumstances being a matter for which articles provide the necessary authority and machinery, but which, generally speaking, they do not imperatively direct to be done.

I have little doubt that where a company has adopted an article in the form of art. 102 in the *Grundt* case, it has been the intention, based on the assumption which has now been shown to be wrong, that a director retiring at an annual general meeting should automatically continue in office if nobody is appointed in his place, or unless the company otherwise resolves; and companies with an article in that form will no doubt consider the desirability of replacing it by an article similar to cl. 76 of the 1929 Table A. It seems to me that that clause would be improved by the addition at the end of some such words as "or not to re-elect the retiring director," so as to make it clear that if a resolution for the re-election of a retiring director is defeated he cannot claim to have been automatically appointed because the company did not proceed to re-elect somebody in his place. As I have indicated, the decision in the *Batcheller* case is authority for the view that such a claim would not succeed even in the absence of such additional words, but it is desirable to make express provision on the point. Incidentally it may be observed that in *Grundt's* case, even had it been held that art. 102 did apply to the annual general meeting, the same result, viz., that the retiring director was not automatically re-elected under its provisions, might have been reached on a different ground, viz., that, as in *Batcheller's* case, the article has no operation if a resolution of the company for the re-election of the director has in fact been defeated.

A CONVEYANCER'S DIARY

THE EXCHANGE CONTROL ACT, 1947

MANY of the provisions of this Act, which came into force on the 1st October, are of direct concern only to those engaged in foreign commerce, but since one of the principal effects of the measure is to prohibit, broadly speaking, the payment of money and the transfer of securities to or in favour of any person resident outside the sterling area, except with the permission of the Treasury, it is obvious that trustees and beneficiaries may be affected by the operation of the Act. There are also certain provisions specifically concerning settlements which deserve the attention of the conveyancer.

I have used the phrase " sterling area " to designate what the language of the Act describes as the " scheduled territories." These appear in a list in Sched. I of the Act. The list of scheduled territories may be amended by order, and as it has already proved necessary to amend the list since the Act came into force, it is clear that constant reference will be required to orders made under the Act to obtain a current definition of this important expression. For practical purposes, the expression at present includes the United Kingdom and all the territories comprised in the Empire, excluding Canada and Newfoundland. The expression " resident " is not defined, except in relation to the personal representatives of a deceased person (s. 42 (1)), but s. 42 (2) confers on the Treasury an arbitrary power to issue directions declaring that a person is to be treated, for all or any of the purposes of the Act, as resident or not resident in such territories as may be specified in such directions. This, together with the power of granting or withholding consent to many of the numerous transactions which come within the Act, leaves the subject almost entirely at the mercy of the Treasury in matters relating to payments and transfers outside the scheduled territories.

No person may now, without the permission of the Treasury, make any payment in the U.K. to or for the credit of a person resident outside the scheduled territories, or make any payment in the U.K. to or for the credit of any person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories, or place any sum in the U.K. to the credit of any person resident outside the scheduled territories (s. 5). Thus, trustees in the U.K. may not now make any payment of trust moneys, without Treasury consent, to a beneficiary resident outside the scheduled territories. This is reasonable enough, granted the necessity which prompted the enactment of the measure. The remaining provisions of the section, however, appear most unreasonable. Trustees will not be able, without the necessary consent, to pay trust moneys into a banking account in a British bank to the credit of a beneficiary resident outside the scheduled territories, nor even, apparently, to keep moneys in their own hands and credit the amount payable to the beneficiary in the trust accounts. If application is made to the Treasury for their consent to make any such payment, either to the beneficiary personally or into his banking account in the U.K., or to credit a beneficiary with the amount due in the trust accounts, the Treasury may direct (s. 32) that the sum payable or to be credited shall be paid or credited to a blocked account at a bank authorised by the Treasury for that purpose. Full provision for the opening and maintenance of blocked accounts is made in Sched. III, which, *inter alia*, provides that sums standing to the credit of any person in a blocked account may, with his consent, be invested in the purchase of prescribed investments. Even the range of investments will thus be subject to Treasury direction. But suppose that a beneficiary resident outside the scheduled territories decides to make over his interest in the trust fund or any part thereof, either by release or otherwise, to a person resident in the scheduled territories; the trustees cannot act on his directions without Treasury consent, and so make the necessary application to the Treasury. In this case the Treasury can either grant or withhold consent. They cannot direct payment of the sum in question to a blocked account, as s. 32 does not in terms apply to this case. If the consent is withheld there is no provision under which the trustees may pay the money into court, and all they can do is to apply again to the Treasury for permission to pay or credit the sum to the beneficiary who has already directed that it should be paid to another person. Unless this part of the Act is administered in a common-sense way the opportunities for circumlocution will be considerable, and the state of the trust accounts may well become one of deplorable confusion.

The transfer of securities and coupons is dealt with in s. 9. The provisions are complex, but the general effect of the section is to prohibit, without Treasury consent, the transfer of securities unless both the transferor and the transferee are resident in the scheduled territories, whether the securities are registered in the U.K. or not, and similarly, to prohibit the transfer of coupons unless the transferee is resident in the scheduled territories. This section should be carefully considered before any attempt is made to appropriate securities in the course of administration or on the winding up of a trust. The Act, however, does not apparently affect specific legacies, except, of course, legacies of securities.

It is obvious that some parts of the Act could be rendered nugatory by making use of the machinery of a trust in order to effect a prohibited transaction. Section 29 accordingly provides that, except with Treasury consent, no person resident in the U.K. shall settle any property so as to confer an interest on, or shall exercise any power of appointment in favour of, a person who is, at the time of the settlement or of the exercise of the power (as the case may be), resident outside the scheduled territories. This prohibition does not extend to a settlement or to the exercise of a power by will (s. 29 (1)). The definition of a settlement is wide and includes any disposition whereby property becomes subject to a trust (or, in the case of a resettlement, to a different trust) and an interest for this purpose is any beneficial interest, whether present or future and whether vested or contingent (s. 29 (4)). Moreover, a person is to be deemed to have an interest for the purpose of the section if he is one of the objects of a limited power of appointment (*ibid.*). Thus, if a settlor makes an *inter vivos* settlement, without Treasury consent, in favour of A, B and C, and C, unknown to the settlor, is disqualified by residence at the time of the settlement, or if a settlor settles a fund on S for life, otherwise than by will, and subject thereto gives S a power of appointment in favour of X, Y and Z, and Z happens to be similarly disqualified, in the one case C, and in the other Z, will be incapable of receiving any benefit under the trust. It is, therefore, incumbent on anyone who takes instructions for an *inter vivos* settlement or disposition to make careful inquiries as to the residence of all beneficiaries, however remote their interest may be, and to obtain Treasury consent to the settlement if there is any doubt on this point. Failure to do so may well deprive a beneficiary of his interest. It is true that the Treasury have certain powers to validate acts done in contravention of the provisions of the Act (s. 29 (3)), but in the absence of information as to how these powers will be exercised, this provision should be regarded as a last resort.

A petition from the Worshipful Company of Solicitors of the City of London asking for an increase of Livery from 250 to 350 was granted by the Court of Aldermen on the 14th October, subject to the conditions that the livery fine should be not less than 30 guineas and that no one should be admitted to the livery until he produced his certificate of freedom.

The Holsworthy County Court was transferred from Circuit No. 59 to Circuit No. 57 as from the 19th October, 1947.

Mr. J. K. BLACKWOOD, one of the Joint Registrars of the Liverpool County Court and one of the Joint District Registrars in the District Registry of the High Court of Justice in Liverpool, retired on the 30th September, 1947.

LANDLORD AND TENANT NOTEBOOK

HARDSHIP A QUESTION OF FACT

WHAT are commonly called "hardship cases," i.e., actions for the recovery of possession of controlled premises in which the plaintiff relies on the body of para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, and the defendant on the proviso thereto, now constitute so large a proportion of landlord-and-tenant problems that I make no apology for writing what will be the fourth article this year on the subject. The occasion of my first article was the decision in *Chandler* v. *Strevett* (1946), 63 T.L.R. 84 (C.A.) (see 91 SOL. J. 144), which I ventured to characterise as a somewhat disappointing case, leaving us in some doubt about the circumstances in which the findings of a county court judge would be reviewed by the Court of Appeal. That court did reverse the judgment of the court of first instance in that case, holding that the county court judge had come to a wrong conclusion "in law" by disregarding the proviso. The decision was unanimous; but that there were differences of degree was apparent: Bucknill, L.J., thought the evidence was all one way, Somervell, L.J., that the case was of the borderline variety. But passages in the judgment of Scott, L.J., running: "Did Parliament intend to leave that very difficult task in its entirety and finally to the county court judge to the exclusion of the Court of Appeal and even of the House of Lords?" and: "Is it the law that such a problem of human happiness and misery, of comfort and inconvenience, are just mere questions of fact with which the Court of Appeal cannot interfere at all; or, on the other hand, matters of inference and opinion on which the Court of Appeal and the House of Lords may give guidance?" seemed likely to raise false hopes. My respectfully-made comment at the time was that inference and valuation appeared to have been confused; when, a few months later, in *Kelley* v. *Goodwin* [1947] 1 All E.R. 810 (C.A.) (see 91 SOL. J. 304), a differently constituted court dismissed an appeal against a decision on the paragraph and proviso, Cohen, L.J., said that counsel for the appellant had relied on some "philosophical observations" of Scott, L.J., in the earlier case which might have had a wider import than was intended by Scott, L.J.

The story is continued, if not concluded, by *Coplans* v. *King* [1947] 2 All E.R. 393, an appeal against an order for possession made a month before the decision of the Court of Appeal in *Chandler* v. *Strevett*. There were two grounds of appeal, one of them complaining of the findings and decision as to comparative hardship. The facts are not set out, but it is clear that the *dicta* of Scott, L.J., in *Chandler* v. *Strevett* were again relied upon. These were referred to most fully this time by Lord Greene, M.R., who, treating the question set out above: "Did Parliament intend to leave . . . to the exclusion of the Court of Appeal and even of the House of Lords?" otherwise than as a rhetorical one, said: "With the greatest possible deference, I should have thought that this is the very thing that Parliament did intend . . . The idea that the question of comparative hardship could be litigated up to the House of Lords appears, again with the greatest deference, to be one which, I should have thought, was clearly contrary to the intention of Parliament."

The court of course accepted the principle adopted in *Chandler* v. *Strevett*, namely, that a finding can be set aside if there is no evidence to support it; but what is and what is not relevant remains a difficult question. Authorities do not, for instance, make it clear whether the fact that the tenant has made no effort to seek other accommodation, or the fact that one party has served in the Forces and the other has not, should be reflected in what is called the hardship balance-sheet. In *Coplans* v. *King*, Lord Greene, M.R., was resorting to a *reductio ad absurdum* when he instanced "the absence of a view of a neighbouring hill, river, tree or something of that kind" as an illustration of what would be irrelevant.

HOLDING OVER CONTROLLED PREMISES

The other point raised in the recent case was this: the defendant was a sub-tenant of the whole of the property comprised in the letting to the plaintiff, who had held over after the termination of a three years' lease. It is not clear whether the expiration occurred before or after the grant of the sub-tenancy, but it looks rather as if the former were the case. The plaintiff had continued to pay rent, which was accepted by the head landlords without comment. The argument advanced for the defendant was that the plaintiff, by parting with possession, had ceased to be entitled to protection and, having become a stranger to the land, had no cause of action. The Court of Appeal held that there was no evidence which would justify the inference of an intention that the relationship should become one of landlord and statutory tenant. Taken by itself, this would be distinctly at variance with the authority of *Morrison* v. *Jacobs* [1945] K.B. 577 (C.A.), in which it was held that from such facts the correct inference was that the tenant held over under the Acts. But, apart from the circumstance that in *Coplans* v. *King* the superior landlords were a limited company, it appears that there must have been other facts before the court, for the judgment goes on to mention evidence which "pointed conclusively to an intention to maintain the ordinary relationship of holding over at common law."

TO-DAY AND YESTERDAY

LOOKING BACK

JAMES WHITELOCK was called to the Bar by the Middle Temple on 24th October, 1600. He soon got into good practice, went the Oxford Circuit and in 1606 became Recorder of Woodstock. He was also returned to Parliament. In 1620, he became a serjeant-at-law and was knighted and appointed Chief Justice of Chester. In 1624, he was made a judge of the King's Bench. While he was junior judge, it fell to him to adjourn the court to Reading on account of the plague then raging in London. The episode is curious. He and his retinue arrived at Hyde Park Corner and "dined on the ground with such meat and drink as they had brought in the coach with them, and afterwards he drove fast through the streets, which were empty of people and overgrown with grass, to Westminster Hall where the officers were ready and the judge and his company went straight to the King's Bench, adjourned the court, returned to his coach and drove away presently out of town." Charles I considered him "a stout, wise and learned man and one who knows what belongs to uphold magistrates and magistracy in their dignity." He was deeply learned in matters beyond the law and once at the Oxford Assizes when some distinguished foreigners were in court "he repeated the heads of his charge to them in good and elegant Latin and thereby informed the strangers of the ability of our judges and the course of our proceedings in law and justice." He was educated at St. John's College, Oxford, of which he became a fellow. Till 1598, he lived chiefly at the university. He died in 1632.

THE DOG'S EVIDENCE

REAL life is constantly beating the humorist, especially in the United States. Not long ago, when there were one or two cases of police dogs playing a major part in the arrest of suspects in central London, an evening paper came out with a cartoon representing a police court scene with a dog standing in the witness box and the magistrate asking him: "And did you see the defendant acting suspiciously near a lady's handbag in Hyde Park?" Since then the following news item has come from New York. Two red setters, who were left several thousand dollars in a will, were cross-examined by the lawyer acting on their behalf. He maintained that their answers were intelligible, while his opponent said that they merely grunted. "The dogs' lawyer asked the court stenographer to read back the dogs' evidence. The stenographer scratched his head, then said he hadn't taken it down. A legal argument followed and, after retiring to consider his decision, Judge Charles Burnell returned with this ruling: "Proceedings in this court must be in the English language. The court reporter is not called upon to write dog

COUNTY COURT CALENDAR FOR NOVEMBER, 1947

Circuit 1—Northumberland
His Hon. Judge Richardson
Alnwick,
Berwick-on-Tweed, 11
Blyth, 10
Consett, 7
Gateshead, 4
Hexham, 25
Morpeth,
†*Newcastle-upon-Tyne, 13, 14 (J.S.), 20 (B.)
North Shields, 27
Seaham Harbour, 24
South Shields, 5
Sunderland, 19, 21

Circuit 2—Durham
His Hon. Judge Gamon
Barnard Castle,
Bishop Auckland, 18
Darlington, 5, 19
*Durham, 4 (J.S.), 17
Guisborough, 26
Leyburn, 3 (R.)
Middlesbrough, 13 (J.S.), 25
Northallerton, 20
Richmond, 6
†*Stockton-on-Tees, 11
Thirsk, 7 (R.)
West Hartlepool, 12

Circuit 3—Cumberland
His Hon. Judge Allsebrook
Appleby,
†*Barrow-in-Furness, 5, 6
Brompton,
*Carlisle, 19
Cockermouth, 13
Haltwhistle,
*Kendal, 18
Keswick,
Kirkby Lonsdale,
Millom, 10
Penrith, 20
Ulverston,
†*Whitehaven, 12
Wigton,
Windermere, 13 (R.)
*Workington

Circuit 4—Lancashire
His Hon. Judge Peel, O.B.E., K.C.
†*Blackburn, 3, 10 (J.S.), 17, 26 (R.B.)
†*Blackpool, 5, 6, 12, 13, 19, 20 (J.S.) (R.B.)
Chorley, 27
Lancaster, 7
†*Preston, 4, 18, 21 (R.B.), 25 (J.S.)

Circuit 5—Lancashire
His Hon. Judge Ormerod
Accrington, 27
Bolton, 5, 19 (J.S.)
*Burnley, 6
Bury, 3 (J.S.), 10 (R.)
Colne, 20
Nelson,
Rochdale, 14 (J.S.), 21 (R.)
Salford, 4, 17, 18 (J.S.), 24, 25

Circuit 6—Lancashire
His Hon. Judge Crosthwaite
His Hon. Judge Harrison
†*Liverpool, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28
St. Helens, 5, 19
Southport, 4, 18
Widnes, 7
*Wigan, 6, 20

Circuit 7—Cheshire
His Hon. Judge Burgis
Altrincham, 5 (J.S.), 19
*Birkenhead, 5 (R.), 6, 12, 17, 18, 19 (R.), 26, 28
Chester, 4, 25
*Crewe, 7
Market Drayton, 14
Nantwich, 21
*Northwich, 20
Runcorn, 11
*Warrington, 13, 27 (J.S.)

Circuit 8—Lancashire
His Hon. Judge Rhodes
Leigh, 14, 28
†*Manchester, 3, 4, 5, 6, 10, 11, 12, 13, 14 (B.), 17, 18, 19, 20, 24, 25, 26, 27, 28 (B.)

Circuit 10-Lancashire
His Hon. Judge Raleigh Batt
*Ashton - under - Lyne, 14
Congleton, 21
Hyde, 26
*Macclesfield, 13
*Oldham, 5, 6, 20 (J.S.)
Rawtenstall, 12
Stalybridge, 27 (J.S.)
*Stockport, 4, 19 (J.S.), 25
Todmorden, 18

Circuit 12—Yorkshire
His Hon. Judge Rice-Jones
*Bradford, 7 (J.S.), 10, 11, 13, 14
Dewsbury, 20
*Halifax, 21
*Huddersfield, 18, 19
Keighley, 4
Otley, 5
Skipton, 6
Wakefield, 12

Circuit 13—Yorkshire
His Hon. Judge Essenhigh
*Barnsley, 19, 20, 21
Glossop, 12 (R.)
Pontefract, 3, 4, 5
Rotherham, 11, 12
*Sheffield, 6, 7, 13, 14, 18 (J.S.), 25 (J.S.), 27, 28

Circuit 14—Yorkshire
His Hon. Judge Stewart
Harrogate, 21
Leeds, 5, 12, 13 (J.S.), 26, 27 (J.S.)
Ripon,
Tadcaster, 25
York, 4, 18

Circuit 16—Yorkshire
His Hon. Judge Griffith
Beverley, 7
Bridlington, 3
Goole, 18 (R.), 21
Great Driffield, 17
†*Kingston - upon - Hull, 10 (R.), 11 (R.), 12, 13, 14 (J.S.), 17 (R.B.), 24 (R.)
Malton, 19
Scarborough, 4, 5, 11 (R.B.)
Selby,
Thorne, 20
Whitby, 5 (R.), 6

Circuit 17—Lincolnshire
His Hon. Judge Shove
Barton-on-Humber, 28 (R.)
†*Boston, 13 (R.), 20, 27 (R.B.)
Bourne, 3 (R.)
Brigg, 3
Caistor,
Gainsborough, 19 (R.), 24
Grantham, 12 (R.), 21
†*Great Grimsby, 5 (J.S.), 6 (R.B.), 7, 26 (J.S.), 27 (*R. every Monday*)
Holbeach, 27 (R.)
Horncastle, 7 (R.)
*Lincoln, 6 (R.), 17
*Louth, 4
Market Rasen, 4 (R.)
Scunthorpe, 11, 17 (R.), 25
Skegness, 7 (R.)
Sleaford, 18
Spalding, 19
Spilsby, 12

Circuit 18—Nottinghamshire
His Hon. Judge Capron
Doncaster, 5, 6, 7
East Retford, 18 (R.)
Mansfield, 11, 25
Newark, 11 (R.), 18
*Nottingham, 6 (R.B.), 12, 13, 14 (J.S.), 19, 20, 21 (B.)
Worksop, 11 (R.), 28

Circuit 19-Derbyshire
His Hon. Judge Willes
Alfreton, 11
Ashbourne, 4
Bakewell,
Burton-on-Trent, 12 (R.B.)
Buxton,
Chesterfield, 7, 14
*Derby, 5, 18 (R.B.), 19, 20 (J.S.)
Ilkeston, 18
Long Eaton,
Matlock, 10
New Mills, 17
Wirksworth,

Circuit 20—Leicestershire
His Hon. Judge Field, K.C.
Ashby-de-la-Zouch, 13
*Bedford, 11 (R.B.), 19
Hinckley, 12
Kettering, 18
*Leicester, 3 ,4, 5 (J.S.) (B.), 6 (B.), 7 (B.)
Loughborough, 11
Market Harborough, 17
Melton Mowbray, 21
Oakham, 14
Stamford, 10
Wellingborough, 20

Circuit 21—Warwickshire
His Hon. Judge Forbes
His Hon. Judge Tucker (Add.)
*Birmingham, 3, 4, 5, 6, 7, 10, 11 (B.), 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 22—Herefordshire
His Hon. Judge Langman, O.B.E.
Bromsgrove, 14
Bromyard,
Evesham, 26
Great Malvern, 3
Hay, 19
*Hereford, 11, 18
*Kidderminster, 4, 25
Kington,
Ledbury, 17
*Leominster, 10
Ross, 21
*Stourbridge, 6, 7
Tenbury,
*Worcester, 12, 13

Circuit 23 — Northamptonshire
His Hon. Judge Hamilton
Atherstone, 27
Banbury, 21
Bletchley, 25
Chipping Norton, 26
*Coventry, 3 (R.B.), 4, 24
Daventry, 12
Leighton Buzzard, 13
*Northampton, 4 (R.) (R.B.), 10, 11
Nuneaton, 5
Rugby,
Shipston-on-Stour, 17
Stow-on-the-Wold,
Stratford-on-Avon, 20
*Warwick, 28 (R.B.)

Circuit 24 — Monmouthshire
His Hon. Judge Thomas
Abergavenny,
Abertillery, 11
Bargoed, 12
Barry, 6
†*Cardiff, 3, 4, 5, 7
Chepstow,
Monmouth, 18
*Newport, 20, 21
Pontypool and Blaenavon, 19, 28
*Tredegar, 13

Circuit 25—Staffordshire
His Hon. Judge Norris
*Dudley, 11, 18, 25
Redditch, 7
*Walsall, 13, 20, 27
*West Bromwich, 12, 19, 26
*Wolverhampton, 14, 21, 28

Circuit 26—Staffordshire
His Hon. Judge Tucker
*Hanley, 6, 20, 21
Leek, 10
Lichfield,
Newcastle - under - Lyme, 11
*Stafford, 7
Stoke-on-Trent, 5
Stone, 24
Tamworth,
Uttoxeter, 28

Circuit 28-Shropshire
His Hon. Judge Samuel, K.C.
Brecon,
Bridgnorth,
Builth Wells,
Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 14
Llandiloes, 5
Ludlow, 10
Machynlleth, 7
Madeley, 13
*Newtown, 6
Oswestry, 11
*Shrewsbury, 17, 20
Wellington, 18
Welshpool, 12
Whitchurch, 19

Circuit 29—Caernarvonshire
His Hon. Judge Ernest Evans, K.C.
Bala, 18
†*Bangor, 10
Blaenau Festiniog,
*Caernarvon, 12
Colwyn Bay, 13
Conway,
Corwen, 18
Denbigh, 25
Dolgelly, 17
Flint, 12 (R.)
Holyhead,
Holywell, 21
Llandudno,
Llangefni, 11
Llanrwst, 14 (R.)
Menai Bridge,
Mold, 20
*Portmadoc,
Pwllheli, 14
Rhyl, 19
*Ruthin,
Wrexham, 26, 27

Circuit 30—Glamorganshire
His Hon. Judge Williams, K.C.
*Aberdare, 4
Bridgend, 24 (R.), 25, 26, 27, 28
Caerphilly, 20 (R.)
Merthyr Tydfil, 6
*Mountain Ash, 5
Neath, 19, 20, 21
*Pontypridd, 12, 13, 14
*Porth, 10
Port Talbot, 18
*Ystradyfodwg, 11

Circuit 31—Carmarthenshire
His Hon. Judge Morris, K.C.
Aberayron,
†*Aberystwyth, 21
Cardigan,
†*Carmarthen and Ammanford, 4, 5
†*Haverfordwest, 19
Lampeter,
Llandovery, 24
Llanelly, 25, 27
Narberth, 17
Newcastle Emlyn, 3
Pembroke Dock,
*Swansea, 10, 11, 12, 13, 14

Circuit 32—Norfolk
His Hon. Judge Carey Evans
Beccles,
Cromer, 19
Diss,
Downham Market,
East Dereham, 5
Fakenham, 18
†*Great Yarmouth, 6, 7
Harleston, 3
Holt,
†*King's Lynn, 4 (R.), 20, 21
*Lowestoft,
North Walsham,
*Norwich, 10 (R.), 11, 12, 13, 14
Swaffham,
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Circuit 33—Essex
His Hon. Judge Hildesley, K.C.
Braintree, 7
*Bury St. Edmunds, 11
*Chelmsford, 4
Clacton, 25
Colchester, 19, 20
Eye,
Felixstowe,
Halesworth, 24
Halstead,
Harwich, 21
Ipswich, 12, 13, 14
†*Maldon, 6
Saxmundham,
Stowmarket, 28
Sudbury, 17
Woodbridge, 5

Circuit 34-Middlesex
His Hon. Judge Tudor Rees
Brentford, 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, 28
Uxbridge, 4, 11, 18, 25

Circuit 35 — Cambridgeshire
His Hon. Judge Campbell
Biggleswade, 25
Bishops Stortford, 26
*Cambridge, 12 (J.S.) (B.), 13, 28 (R.B.)
Ely, 10
Hitchin, 7
*Huntingdon, 6, 14 (R.)
Luton, 13 (R.B.), 27 (J.S.) (B.), 28
March, 24
Newmarket, 14
*Oundle,
Peterborough, 3, 4, 28 (R.)
Royston, 5
Saffron Walden,
Thrapston,
Wisbech, 11

Circuit 36—Berkshire
His Hon. Judge Hurst
*Aylesbury, 14, 27 (R.B.)
Buckingham, 25
Cheltenham, 11, 12
Henley-on-Thames,
High Wycombe, 13
Northleach, 10
Oxford, 6, 10 (R.B.), 17
Reading, 13 (R.B.), 19, 20, 21
Tewkesbury, 17
Thame,
Wallingford, 24
Wantage,
Witney,

Circuit 37-Middlesex
His Hon. Judge Sir Gerald Hargreaves
His Hon. Judge Alun Pugh
Chesham, 4
*St. Albans, 18, 21
West London, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 38-Middlesex
His Hon. Judge Done
His Hon. Judge Whitmee
Barnet, 11, 25
*Edmonton, 4, 6, 7, 13, 14, 18, 20, 21, 27, 28
Hertford, 12
Watford, 5, 19, 26

Circuit 39-Middlesex
His Hon. Judge Engelbach
His Hon. Judge Pratt (Add.)
Shoreditch, 3, 4, 6, 7, 10, 11, 13, 14, 17, 18, 20, 21, 24, 25, 27, 28
Windsor, 5, 12, 19, 26

Circuit 40-Middlesex
His Hon. Judge Tylor, K.C.
His Hon. Judge Drucquer (Add.)
His Hon. Judge Alun Pugh (Add.)
Bow, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 41-Middlesex
His Hon. Judge Earengey, K.C.
His Hon. Judge Trevor Hunter, K.C. (Add.)
Clerkenwell, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 42-Middlesex
His Hon. Judge Davies, K.C.
Bloomsbury, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 43-Middlesex
His Hon. Judge Bensley Wells
Marylebone, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 44-Middlesex
His Hon. Judge Drucquer
His Hon. Judge Davies, K.C. (Add.)
Westminster, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 45—Surrey
His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 4, 7, 11, 14, 18, 21, 25, 28
*Wandsworth, 5, 6, 7, 10, 12, 13, 19, 20, 21, 24, 26, 27

Circuit 46-Middlesex
His Hon. Judge Neal
*Willesden, 3, 4, 5, 6, 7, 11, 12, 13, 14, 17, 18, 19, 20, 21, 25, 26, 27, 28

Circuit 47—Kent
His Hon. Judge Daynes, K.C.
Southwark, 3, 7, 10, 14, 17, 21, 24, 28
Woolwich, 6, 12, 13, 19, 20, 26, 27

Circuit 48—Surrey
His Hon. Judge Collingwood
His Hon. Judge Dale
Dorking, 13
Epsom, 4, 5, 12, 25, 26
*Guildford, 6, 20
Horsham, 27
Lambeth, 3, 5, 7, 10, 11, 14, 17, 18, 19, 21, 24, 25, 28
Redhill, 19

Circuit 49—Kent
His Hon. Judge Clements
Ashford, 10
*Canterbury, 18
Cranbrook, 17
Deal,
†Dover, 5
Folkestone,
Hythe, 21
*Maidstone, 7
Margate,
†Ramsgate, 19
†*Rochester, 12, 13
Sheerness, 6
Sittingbourne, 4
Tenterden,

Circuit 50—Sussex
His Hon. Judge Archer, K.C.
Arundel,
Brighton, 6, 7, 13, 20, 21, 27, 28
†Chichester, 14
*Eastbourne, 12
*Hastings, 18
Haywards Heath,
*Lewes,
Petworth, 24
Worthing, 4, 25

Circuit 51 — Hampshire
His Hon. Judge Topham, K.C.
Aldershot,
Basingstoke, 12
Bishops Waltham,
Farnham, 19
*Newport,
Petersfield, 14
†*Portsmouth, 3 (B.), 6, 13, 20
Romsey,
Ryde, 26
†*Southampton, 4, 7, 11, 12 (B.), 18
*Winchester, 5

Circuit 52—Wiltshire
His Hon. Judge Jenkins, K.C.
*Bath, 6 (B.), 13 (B.)
Calne, 7
Chippenham, 11
Cirencester, 22
Devizes, 10
Dursley, 20
*Frome, 19 (B.)
Hungerford,
Malmesbury, 20 (R.)
Marlborough, 18
Melksham,
*Newbury, 3 (B.)
Stroud, 4
*Swindon, 5, 12 (B.)
Trowbridge, 14
Warminster, 15
Wincanton, 21

Circuit 54-Somersetshire
His Hon. Judge Wethered, O.B.E.
†*Bridgwater, 14
†*Bristol, 3, 4, 5, 6, 7 (B.), 24 (J.S.), 25, 26, 27, 28 (B.)
Gloucester, 17, 19
Minehead, 18
Newent,
Newnham,
Thornbury, 10
*Wells, 11
Weston-super-Mare, 12

Circuit 55 — Dorsetshire
His Hon. Judge Armstrong
Andover, 12 (R.)
Blandford,
*Bournemouth, 13 (R. 18, 19, 20
Bridport, 25 (R.)
Crewkerne, 18 (R.)
*Dorchester, 7
Lymington,
*Poole, 12, 26 (R.)
Ringwood,
*Salisbury, 6
Shaftesbury, 3
Swanage,
*Weymouth, 4
Wimborne,
*Yeovil, 13

Circuit 56—Kent
His Hon. Judge Sir Gerald Hurst, K.C.
Bromley, 5, 11, 12, 26
*Croydon, 3, 4, 14, 17, 18, 19, 28
Dartford, 6, 20
East Grinstead, 25
Gravesend, 10
Sevenoaks, 24
Tonbridge, 27
Tunbridge Wells, 13

Circuit 57-Devonshire
His Hon. Judge Pratt
Axminster, 10
†*Barnstaple, 18
Bideford, 19
Chard, 11
†*Exeter, 6, 7
Holsworthy (*list not received*)
Honiton,
Langport, 10 (R.)
Newton Abbot, 13
Okehampton,
South Molton, 20
Taunton, 3
Tiverton, 12
*Torquay, 4, 5
Torrington,
Totnes, 14
Wellington, 17

Circuit 58—Essex
His Hon. Judge Hunter, K.C.
His Hon. Judge Andrew
Brentwood, 21 (R.)
Grays Thurrock, 11 (R.)
Ilford, 3 (R.), 4, 5, 6 10 (R.), 12, 13, 17 (R.), 18, 19, 20, 24 (R.), 25, 26, 27
*Southend, 12, 13 (R.), 14, 19 (R.B.), 26 (R.), 27, 28

Circuit 59—Cornwall
His Hon. Judge Armstrong
Bodmin, 9, 11 (R.)
Camelford, 10, 14 (R.)
Falmouth,
Helston, 3
Kingsbridge,
Launceston, 11
Liskeard, 1, 13 (R.)
Newquay,
†*Penzance, 8
Plymouth, 12 (R.), 16, 17, 22, 23
Redruth, 4, 17 (R.)
St. Austell, 2
Tavistock, 15
†*Truro, 5

The Mayor's & City of London Court
His Hon. Judge Sir Gerald Dodson
His Hon. Judge Beazley
His Hon. Judge McClure
His Hon. Judge Thomas
Guildhall, 3, 4, 5 (A.), 6, 7 (J.S.), 11, 12 (A.), 13, 14 (J.S.), 17, 18, 19 (A.), 20, 21 (J.S.), 24, 25, 26 (A.), 27, 28 (J.S.)

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* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

language." Of course, the mute appeal of our dumb friends has been used with eloquent effect in courts of justice. The late Sir Henry Curtis-Bennett once appeared in the police court to defend a particularly savage mongrel named Bobs on a capital charge. With great courage he insisted that the beast should be brought into court unmuzzled. He finished his address with one hand in his pocket and the other caressing Bobs and won his case. He walked quietly out of court without a word to anyone, hoping, we are told, "that the snap the dog had made at his hand while on the table had been due to nerves."

THE ANIMAL DECIDES

THE classical example of a dog giving evidence was the occasion of a judgment of Solomon by Sir Thomas More: "Sir Thomas his last wife loved little dogs to play withal. It happened that she was presented with one which had been stolen from a poor beggar woman. The poor beggar challenged her dog, having spied it in the arms of one of the serving men that gave attendance upon my lady. The dog was denied her; so there was great hold and keep about it. At length Sir Thomas had notice of it; so caused both his wife and the beggar to come before him in his hall and said 'Wife, stand you here at the upper end of the hall, because you are a gentlewoman, and, goodwife, stand you there beneath, for you shall have no wrong.' He placed himself in the midst and held the dog in his hands saying to them: 'Are you content that I shall decide this controversy that is between you concerning this dog?' 'Yes,' quoth they. 'Then,' said he, 'each of you call the dog by his name and to whom the dog cometh, she shall have it.' The dog came to the poor woman; so he caused the dog to be given to her and gave her besides a French crown and desired that she would bestow the dog upon his lady. The poor woman was well apaid with his fair speeches and his alms and so delivered the dog to my lady."

REVIEW

The Law of Collisions on Land. By ANDREW D. GIBB, LL.B., of Gray's Inn, Barrister-at-Law, Advocate of the Scottish Bar. 1947. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 42s. net.

Legal authors are tending more and more to classify our law according to its practical application rather than under generic or theoretical headings. Nevertheless Professor Gibb, in this very practical and useful book, keeps well before the reader the basic principles of the law of negligence, of which his subject is a branch, besides covering such important incidental aspects as insurance, damages, pleadings, limitation, evidence and criminal liability in connection with vehicles. The style is clear, and the chapter on Running-Down Accidents on Railways in particular benefits from a conspicuously logical arrangement.

The author's personal approach is perhaps a trifle out of fashion and his championship of the rights of pedestrians (pp. 94–95) possibly too partisan to commend itself to motoring readers. The professor doubts a motorist's right to signal by means of his horn to clear off, under pain of being run down, a pedestrian who "occupies" spot *X* on a highway. No road-user has, of course, any right to run another down, but in stating this the author surely lays insufficient emphasis on the proper use of the road by the pedestrian. Perhaps it is the word "occupy" which conveys at first a wrong impression to at least one reader. Though it may not involve the risk of being lawfully run-down, the "occupation" of spot *X* except for purposes of reasonably speedy passage over it is nevertheless unjustifiable in any user of the highway.

The book contains many features of great practical utility. For instance, the various regulations affecting the use of the road are conveniently tabulated according to their subject matter, and the practitioner will find the summary of cases in which damages for shortening of life have been awarded of interest and value. The illustrations throughout the book are enriched by many examples from Scottish cases.

PRACTICE DIRECTION

(CHANCERY DIVISION)

EXCHANGE CONTROL ACT, 1947

Every judgment or order whereby—

(i) any person is directed to deliver up or transfer any securities or certificates of title to securities as defined by Section 42 of the Exchange Control Act, 1947, or to carry out any transaction in relation thereto;

(ii) any person is directed to do or perform any act or carry out any transaction which to the Court or a Judge may appear to be subject to the provisions of the said Act (other than a payment to which paragraph 1 of the Fourth Schedule to the said Act applies)

shall be expressed to be made subject to the provisions of the said Act unless the person in whose favour the judgment or order is given or made has satisfied the Court or Judge making the order that such delivery up, transfer or transaction will not be contrary to the provisions of that Act or that the requisite permission of the Treasury relative thereto has been obtained and that the conditions (if any) laid down in such permission have been or will be complied with.

(Sgd.) A. H. HOLLAND,
Chief Master,
Chancery Division.

13th Oct., 1947.

THE LAW SOCIETY

A special general meeting of the members of the Society, called by the Council, will be held at the Society's Hall, on Thursday, the 27th November, 1947, at 2 p.m.

The business of the meeting will be the election of the seven members (not being members of the Council) of the committee to be set up in accordance with the following resolution, which was carried at the annual general meeting of the Society, held on the 4th July, 1947, and subsequently adopted by the Council on the 11th July, 1947:—

"Resolved that as the present constitution of the Society based on the original Charter of 1845 and its supplemental Charters requires drastic revision, a committee of twelve members be set up (of whom five shall be appointed by the Council, and the remainder, not being members of the Council, shall be elected by a general meeting to be held before the end of the year 1947) to consult with the Provincial Law Societies, and—

(i) To report to the Society in what respects the present constitution is unsatisfactory;

(ii) To make proposals for its revision or for a new constitution and revision of the Charters;

(iii) On the procedure to be adopted for ensuring full consideration of such proposals by the members."

Notices of motion for the election of members (not being members of the Council) to serve on the committee must reach the Secretary at The Law Society's Hall, Chancery Lane, W.C.2, not later than Wednesday, 5th November, 1947, must be signed by the mover and by the nominee, and must contain the following particulars:—

(1) Full names of nominee.
(2) Address of nominee.
(3) Age of nominee.
(4) Date of admission of nominee.
(5) Date of nominee's election as a member of The Law Society.
(6) Name of firm of nominee (if in private practice), or appointment held (if otherwise employed).
(7) Name and address of mover.

OBITUARY

MR. W. BRAMWELL

Mr. William Bramwell, of Messrs. W. Bramwell & Co., Preston, died on 13th October, aged eighty-three. He was admitted in 1885, and was a past president of the Preston Incorporated Law Society.

SIR NORMAN MACPHERSON

Sir Norman Macpherson, S.S.C., Solicitor in Scotland to the Treasury, Lords Commissioners of the Admiralty, War Department and Air Ministry, died on 16th October.

MR. J. F. TRAVERS

Mr. John Francis Travers, of Messrs. Holden, Scott & Co., Hull, died on 10th October, aged sixty-nine. He was admitted in 1901.

Mr. DANIEL HOPKIN will shortly transfer from the North London Magistrate's Court to Marlborough Street, the court from which Mr. J. B. Sandbach, K.C., recently retired.

The Committee of the Society of Comparative Legislation have decided that under the present circumstances the Dinner to Lord Macmillan which was to have been held on the 5th November must be postponed.

NOTES OF CASES

CHANCERY DIVISION

***In re* Edwards' Will Trusts; Dalgleish *v.* Leighton and Others**

Jenkins, J. 25th July, 1947

Will—Settlement—Trustee—Power of appointment—Bequests in will in accordance with trusts of settlement—Trusts of settlement to be declared by future memorandum—Unwitnessed memorandum exercising power of appointment under settlement—Codicils—Whether memorandum valid testamentary disposition—Whether trustee entitled to exercise power of appointment in his own favour.

Adjourned summons.

E, who died on 6th February, 1944, executed a number of instruments disposing of his property, comprising (*a*) a settlement dated 16th October, 1936, (*b*) a will, of even date, (*c*) a memorandum, dated 26th December, 1937, purporting to exercise a general power of disposition reserved to him by the settlement, and (*d*) three codicils, dated 15th and 22nd September, 1939, and 4th February, 1944. By the settlement, the defendant L was appointed "managing trustee" for the time being. By cl. 2, "the trust fund and the income thereof shall be held upon trust to pay the income and to transfer the capital . . . to such persons . . . as the settlor shall by any memorandum under his hand direct and in default of such direction upon trust to pay or transfer the same . . . to such persons . . . as the managing trustee shall in his absolute and uncontrolled discretion think fit." Clause 3 gave certain benefits to the settlor's wife and children, subject to the provisions of cl. 2, and cl. 5 provided that "the statutory power of appointing a managing or custodian trustee . . . shall be vested in the settlor during his life and after his death in the said L, and after his death in the legal personal representatives of the said L."

By cl. 2 of his will the testator gave "all my property . . . to the trustees of . . ." (the settlement in suit) . . . "upon the trusts and subject to the powers and provisions therein declared and contained so far as such trusts powers and provisions are subsisting and capable of taking effect." By the memorandum, which was signed but not witnessed, the settlor directed the trustees to raise and pay out of the trust funds certain sums to L, and to members of the testator's family. The capital funds of the settlement (excluding such funds as might be brought under the settlement by cl. 2 of the will) amounted to £100 only. The questions for consideration were (*a*) whether cl. 2 of the will constituted an effective bequest, and (*b*) whether L was entitled to exercise for his own benefit the power of appointment conferred on him by cl. 2 of the settlement.

JENKINS, J., said that the authorities from *Gibbs* v. *Rumsey* ((1813), 2 V. & B. 294) to *Re Howell* ([1915] 1 Ch. 124), established the proposition that when a person was appointed to a fiduciary position and given a power of disposition over trust property, it was a matter of construction in each case whether the power was given to him as an individual or given *virtute officii*. In the present case the language indicated that a person other than L might become the managing trustee; all the powers conferred were conferred not on L individually but on the person holding the office of managing trustee for the time being. A trust corporation might be so appointed, and it was absurd to suppose that the settlor intended that such a trustee might dispose of the trust property in favour of itself. On the true construction of the will, the effect was that cl. 2 of the will must be read as if it set out the trusts of the settlement. If the testator had died immediately after the execution of the will and the settlement, the property would not have been effectively disposed of, *quoad* cl. 2 of the settlement, as what he had purported to do was to dispose of the property by reference to trusts to be declared by some future document not in testamentary form. The memorandum in its form was an adequate exercise of power *quoad* the settlement, but could not be a valid testamentary document, though it was no doubt intended to be such. If, therefore, the testator had died immediately after the execution of the memorandum, there would again have been no effective disposition of the property *quoad* cl. 2 of the settlement. The question remained whether the codicils produced a different result giving effect to the principle that a codicil brought an antecedent will down to its own date. The result was that the testator, by a will considered to be of the date of the last codicil, had left his estate upon certain referential trusts including such trusts as he should declare in some future memorandum. That meant that the existing memorandum could not be incorporated as part of the testamentary papers. It followed again, therefore, that the residuary gift, *quoad* cl. 2 of the settlement, was bad. This conclusion was supported by a consideration of *In the Goods of Smart* ([1902] P. 238), *University College of North Wales* v. *Taylor* ([1908] P. 140), *In re Keen* ([1937] Ch. 236), and *In re Jones* ([1942] Ch. 238). It had been argued that, even if the trusts by reference to cl. 2 of the settlement were abortive, there was a valid trust under cl. 3. But it was clear that the testator's intention was to incorporate as part of the trusts of his will the whole of the trusts subsisting under the settlement. That intention had failed, and the court could not make a new will for the testator by accepting some and rejecting other portions of his dispositions.

COUNSEL: *J. Alberry; Pascoe Hayward*, K.C., and *T. A. C. Burgess; Andrew Clark*, K.C., and *I. Goulding; E. M. Winterbotham.*

SOLICITORS: *Mossop Syms; Wordsworth & Co.; James Turner & Sons; Middleton, Lewis & Clarke.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

Grundt *v.* Great Boulder Proprietary Gold Mines, Ltd.

Wynn Parry, J. 29th July, 1947

Company—Articles of association—Provision that a retiring director should continue in office if his place was not filled "at any annual general meeting at which an election of directors ought to take place"—Whether retiring director not re-elected entitled to continue in office when number of directors not reduced below the minimum.

Motion (treated as the trial of the action).

Article 68 of the defendant company's articles of association provided that "The business of an ordinary meeting shall be to receive and consider the profit and loss account . . . to elect directors in place of those retiring in rotation . . . to declare dividends and to transact any other business which under these presents ought to be transacted at an ordinary meeting . . ." By art. 88: "Until otherwise determined by the company in general meeting, the number of directors shall be not less than three nor more than five." By art. 99: "At the ordinary meeting . . . one-third of the directors . . . shall retire from office, and be eligible for re-election. The company at any general meeting at which directors retire may fill up the vacated offices . . ." By art. 101: "No person not being a retiring director shall . . . be eligible for election to the office of director unless a nomination . . . shall be left at the registered office of the company not less than seven days . . . before the day for election . . ." By art. 102: "If at any general meeting at which an election of directors ought to take place, the place of any director retiring by rotation is not filled up, he shall, if willing, continue in office until the ordinary meeting in the next year . . . until his place is filled up . . ." The plaintiff, a director of the company, retired in rotation at the annual general meeting in 1947. He offered himself for re-election, and was proposed and seconded by other directors, but his re-election was defeated; the number of directors was reduced to four. He moved for a declaration that he was nevertheless entitled to continue in office.

WYNN PARRY, J., said that the court should first construe the articles in suit before considering the impact of other decisions on other articles. The plaintiff contended that art. 68 contained an imperative direction to the ordinary general meeting to elect a replacing director. The article could not bear that construction; some of the other powers, e.g., the declaration of a dividend, were plainly optional. The power was optional, as shown further by art. 99. Four directors were left after the plaintiff's retirement, which was above the minimum number specified in art. 88, and it followed that the 1947 general meeting was not a meeting "at which an election of directors ought to take place" within the meaning of art. 102. The only occasion on which it would be imperative to make an election under art. 102 was when the number of directors fell below the minimum authorised for the time being. The contrary construction would lead to an absurdity, because, in view of the provisions of art. 101 requiring previous notice for the election of an extraneous director, the shareholders in general meeting could never effectively provide that a particular director should not continue in office. This would be an absurdity of the type referred to in *Robert Batcheller & Sons, Ltd.* v. *Batcheller* [1945] Ch. 169. The motion failed.

COUNSEL: *J. F. Bowyer; C. R. Russell.*

SOLICITORS: *Nordon & Co.; Linklaters & Paines.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Denerley *v.* Spink

Lord Goddard, C.J., and Atkinson and Oliver, JJ. 23rd April, 1947

Pharmacy and poisons—Several shops owned by qualified chemist—Absence of qualified assistant at one shop—Shop described as "Chemists"—Pharmacy and Poisons Act, 1933 (23 & 24 *Geo.* 5, *c.* 25), *s.* 3 (2).

Case stated by East Riding Justices.

An information was preferred against the respondent, a duly registered and qualified chemist, alleging contravention of s. 3 (2) of the Pharmacy and Poisons Act, 1933. The chemist owned chemists' shops in various places, at each, except one, of which a qualified assistant was in control. At that one shop no poisons were sold or could be used because they were locked up in a cupboard, the key of which was in the chemist's possession. Medicines were not dispensed at the shop. Packed medicines and medicinal preparations, some containing drugs but none poisons, were, however, sold there. The name "Spinks the Chemists" appeared on a board above the shop, as also on the label attached to a bottle of glycerine and rose water bought by the prosecutor, the appellant. A card exhibited in the window informed the public that owing to war conditions no qualified assistant chemist was in attendance at the shop. By s. 3 (2) of the Pharmacy and Poisons Act, 1933, "It shall not be lawful for a person to use in connection with any business any title . . . or description reasonably calculated to suggest that he or anyone employed in the business possesses any qualification with respect to the selling, dispensing or compounding of drugs or poisons other than the qualification which he in fact possesses." The information was dismissed, and the prosecutor now appealed.

LORD GODDARD, C.J., said that, as the business was owned and carried on by a qualified chemist, the title above the shop represented no more than that the shop belonged to such a person. As that was the fact, the title did not constitute a contravention of s. 3 (2), that subsection being concerned with representations made in respect of a business and not in respect of any particular premises where it was carried on. Section 3 (2) was a penal provision, and must be construed strictly. The prosecutor's argument involved reading the words "he or anyone employed in the business" as "he or any person in control of premises where the business is carried on." There was no warrant for that construction. Where the Legislature meant to refer to premises, it did so, for example, in relation to the word "pharmacy" in the same subsection. In any event, the display in the window of the notice stating that no qualified assistant was in attendance prevented the use of the word "chemist" from being "reasonably calculated" to make the suggestion referred to in s. 3 (2), the mere use of the word "chemist" above the shop not being itself sufficient in all circumstances to constitute the offence in question. The justices had decided the case on that ground, in his (his lordship's) opinion correctly. He would reserve his opinion on the question whether the use of the word "pharmacy" above the shop would similarly be counteracted by a placard in the window. The appeal must be dismissed.

COUNSEL: *Blanco White*, K.C., *Cyril Morgan* and *Sopher*; *Raeburn*.

SOLICITORS: *A. C. Castle*; *Smith & Hudson*, for *Mainprize, Rignall & Whitworth*, Hull.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Elkins *v.* **Cartlidge**

Lord Goddard, C.J., Atkinson and Oliver, JJ. 24th April, 1947

Road Traffic—Motor car—Drunk in charge—Car in hotel car park —"Public place"—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 15.

Case stated by West Riding Justices.

An information was preferred charging the defendant with contravening s. 15 of the Road Traffic Act, 1930, by being in charge of a motor vehicle in a public place while under the influence of drink to such an extent as to be incapable of having proper control of it. At the material time the defendant, being under the influence of drink, was in charge of a motor car in an enclosure at the rear of a public-house. At the side of the public-house there was a well-defined parking ground from which an open gateway gave access to the enclosure. Cars were allowed by the proprietor of the public-house to be parked in the park and the enclosure, and members of the public parked them there in fact. It was contended for the prosecutor that the enclosure was a "public place" within the meaning of s. 15. The driver contended the contrary. The justices dismissed the information, holding the enclosure to be private property and therefore not a "public place." The prosecutor appealed.

LORD GODDARD, C.J., said that, having regard to the words "road or other public place" in s. 15, the two things being treated as *ejusdem generis*, and to the definition of "road" as ". . . any other road to which the public has access," "public place" must be construed as a place to which the public had access. The enclosure in question was accordingly a "public place" within the meaning of the section, and the driver should have been convicted. The case was concluded by *R.* v. *Collinson* (1931), 23 Cr. App. Rep. 49, which was indistinguishable in principle. The appeal must be allowed.

COUNSEL: *Withers Payne*; *C. P. Harvey*.

SOLICITORS: *R. C. Linney*, Wakefield; *Broadbent, Rhodes and Co.*, Leeds.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TITHE ACT, 1936: NOTICE OF CHANGE OF OWNERSHIP OF LAND

The Tithe Redemption Commission find that the provisions of subs. (9) of s. 18 of the Tithe Act, 1936, are often overlooked.

The subsection makes it the duty of any person who was the owner of land (in respect of which a redemption annuity is charged), immediately before the execution of any instrument whereby an estate or interest in that land is disposed of or created in such a way as to bring about a change in the ownership of it, to furnish to the Commission, within one month of the date of the execution of that instrument, particulars of it and of the name and address of every person who has thereby become an owner of the land or any part thereof. "Owner" is defined by s. 17 of the Act.

The form in which these particulars must be furnished is prescribed by the Redemption Annuities (Amendment) Rules, 1937 (S.R. & O., 1937, No. 231), and prints of it may be purchased from His Majesty's Stationery Office.

Neglect to furnish the required particulars not only involves liability, on summary conviction, to a fine of £5, but also gives rise to unnecessary correspondence. The former owners of the land receive demands from the Commission's collectors (who have no knowledge of the change of ownership) for the payment of annuities which are due from the new owner. Sometimes also inadequate particulars are furnished which are insufficient for the identification of the land, with the result that the former owner may be put to trouble and expense.

The attention of solicitors is drawn to these matters and, in particular, to the provisions of subs. (3) of s. 18, under which, when the register is completed, the owner of land who has failed to give notice of change of ownership may find himself subject to liabilities from which he would have escaped if due notice had been given.

NOTES AND NEWS

Honours and Appointments

The King has approved the conferment of a knighthood upon Mr. G. H. B. STREATFEILD, K.C., on his appointment as a Justice of the High Court of Justice. Mr. Justice Streatfeild was called to the Bar by the Inner Temple in 1921 and took silk in 1938. He was appointed Recorder of Rotherham in 1932, and later held this office at Huddersfield and Hull.

The Lord Chancellor has appointed Mr. HORACE ANDREW VISICK, Registrar of the Truro and Falmouth, St. Austell and Redruth County Courts and District Registrar in the District Registry of the High Court of Justice in Truro, to be in addition the Registrar of Newquay County Court as from the 1st October, 1947.

The Lord Chancellor has appointed Mr. JAMES MATTHEWS ELDRIDGE to be the sole Registrar of Oxford County Court and sole District Registrar in the District Registry of the High Court of Justice in Oxford, and to be Registrar of the Thame County Court as from the 1st October, 1947, in addition to the appointments he already holds as Registrar of the Wallingford, Wantage and Witney County Court.

His Honour Judge Thesiger retired from the County Court bench on the 18th October, 1947, and the Lord Chancellor has appointed His Honour Judge PRATT to succeed Judge Thesiger as Judge of Circuit No. 57 (Exeter, etc.) as from the 19th October, 1947.

Mr. E. R. NEVE, K.C., has been appointed Chairman, and Mr. A. A. WATSON, K.C., and Mr. E. H. PEARCE, K.C., have been appointed Deputy Chairmen, of the Court of Quarter Sessions for the Eastern Division of Sussex.

Mr. J. F. ALLEN has been appointed Liabilities Adjustment Officer of the Plymouth Liabilities Adjustment Office as from the 1st October, 1947, vice Mr. D. F. Nash.

Mr. H. L. SMEDLEY, solicitor, Southern Railway, has been appointed Legal Adviser and Solicitor to the Railway Executive. He was admitted in 1908.

Notes

The Manchester and Bristol Liabilities Adjustment Offices have been closed.

In view of the recent announcement by the Government regarding large public dinners, the Royal Institution of Chartered Surveyors announces that the Institution's dinner, which was to have taken place on Thursday, 11th March, 1948, will not now be held.

UNITED LAW SOCIETY

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 13th October, Mr. F. R. McQuown in the chair, in the absence of Mr. R. N. Hales. Mr. A. Garfitt and Mr. B. Baker proposed: "That a Socialist administration is the only solution for the present crisis." Mr. S. A. Redfern opposed. There also spoke Messrs. R. N. Hales (who had been unavoidably detained), O. T. Hill, E. D. Smith, J. I. E. Arnold, S. E. Redfern, Miss F. L. Berman, Messrs. Oliver, J. G. Omerod and C. K. Pritchard. The motion was rejected by 9 votes to 4.

The present Secretaries of the United Law Society are Messrs. E. Dennis Smith, 11 King's Bench Walk, Temple, E.C.4, and C. Hardinge Pritchard, Palace Chambers, Bridge Street, S.W.1.

LAW STUDENTS' DEBATING SOCIETY

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 14th October (Chairman, Mr. A. C. Goodall), the subject for debate was: "That in the interests of justice and economy one Appellate Court is sufficient." Mr. C. D. Wickenden opened in the affirmative; Mr. J. M. Shaw opened in the negative. Mr. C. Barry seconded in the affirmative; Mr. A. C. Simpson seconded in the negative. The following members also spoke: Messrs. W. D. Chesters, C. R. Sopwith, B. Greenby, A. E. Hogan-Fleming, and F. D. Kennedy. The opener having replied, and the Chairman having summed up, the motion was lost by three votes. There were fourteen members and three visitors present.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2197. **Defence Regulations.** Order in Council revoking Regulation 60CB of the Defence (General) Regulations, 1939. October 14.

No. 2195. **Post Office** (Execution of Documents) (Amendment) Warrant. October 11.

No. 2161. **Pottery** (Health) Special Regulations. October 7.

No. 2160. **Unemployment Insurance** (Anomalies) (Amendment) (Extension) Order. October 1.

LAND REGISTRY

Form No. 72, Rule 229. Land Registration Acts, 1925 and 1936. Priority Caution (or Inhibition) under s. 102 of the 1925 Act to secure priority as between Minor Interests on a dealing therewith. (Reprinted 1947.)

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Oct. 27	Mr. Jones	Mr. Blaker	Mr. Andrews
Tues., ,, 28	Reader	Andrews	Jones
Wed., ,, 29	Hay	Jones	Reader
Thurs., ,, 30	Farr	Reader	Hay
Fri., ,, 31	Blaker	Hay	Farr
Sat., Nov. 1	Andrews	Farr	Blaker

Date	Group A		Group B	
	Mr. Justice Roxburgh *Non-Witness*	Mr. Justice Wynn Parry *Witness*	Mr. Justice Romer *Non-Witness*	Mr. Justice Jenkins *Witness*
Mon., Oct. 27	Mr. Farr	Mr. Hay	Mr. Reader	Mr. Jones
Tues., ,, 28	Blaker	Farr	Hay	Reader
Wed., ,, 29	Andrews	Blaker	Farr	Hay
Thurs., ,, 30	Jones	Andrews	Blaker	Farr
Fri., ,, 31	Reader	Jones	Andrews	Blaker
Sat., Nov. 1	Hay	Reader	Jones	Andrews

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Oct. 20 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	110	3 12 9	2 14 8
Consols 2½%	JAJO	87	2 17 6	—
War Loan 3% 1955–59	AO	102	2 18 10	2 14 0
War Loan 3½% 1952 or after	JD	104	3 7 4	2 12 8
Funding 4% Loan 1960–90	MN	113xd	3 10 10	2 15 10
Funding 3% Loan 1959–69	AO	102½	2 18 6	2 14 9
Funding 2½% Loan 1952–57	JD	101	2 14 5	2 10 3
Funding 2½% Loan 1956–61	AO	98½	2 10 9	2 12 9
Victory 4% Loan Av. life 18 years	MS	114½	3 9 10	2 19 0
Conversion 3½% Loan 1961 or after	AO	106½	3 5 9	2 17 11
National Defence Loan 3% 1954–58	JJ	102½	2 18 6	2 10 1
National War Bonds 2½% 1952–54	MS	100	2 10 0	2 10 0
Savings Bonds 3% 1955–65	FA	102	2 18 10	2 14 0
Savings Bonds 3% 1960–70	MS	101½	2 19 1	2 17 3
Treasury 3%, 1966 or after	JO	100	3 0 0	3 0 0
Treasury 2½%, 1975 or after	AO	87	2 17 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	98½	3 0 11	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	96½	2 17 0	—
Redemption 3% 1986–96	AO	103½	2 18 0	2 17 0
Sudan 4½% 1939–73 Av. life 16 years	FA	108½	4 2 11	3 15 7
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	—
Tanganyika 4% Guaranteed 1951–71	FA	103½	3 17 4	2 18 2
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	95½	2 12 4	3 4 7
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107½	3 14 5	2 17 5
Australia (Commonw'h) 3½% 1964–74	JJ	105½	3 1 7	2 16 9
*Australia (Commonw'h) 3% 1955–58	AO	101½	2 19 1	2 15 7
†Nigeria 4% 1963	AO	112½	3 11 1	3 0 1
*Queensland 3½% 1950–70	JJ	101	3 9 4	—
Southern Rhodesia 3½% 1961–66	JJ	105	3 6 8	3 1 1
Trinidad 3% 1965–70	AO	99½	3 0 4	3 0 8
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	95	3 3 2	—
*Leeds 3½% 1958–62	JJ	104	3 2 6	2 15 3
*Liverpool 3% 1954–64	MN	102	2 18 10	2 13 2
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	108	3 4 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	96½	3 2 2	—
*London County 3½% 1954–59	FA	105½	3 6 4	2 12 6
*Manchester 3% 1941 or after	FA	97½	3 1 6	—
*Manchester 3% 1958–63	AO	102	2 18 10	2 15 2
Met. Water Board "A" 1963–2003	AO	96½	3 2 2	3 2 8
* Do. do. 3% "B" 1934–2003	MS	99½	3 0 4	3 0 10
* Do. do. 3% "E" 1953–73	JJ	100½	2 19 8	2 17 10
Middlesex C.C. 3% 1961–66	MS	102	2 18 10	2 16 4
*Newcastle 3% Consolidated 1957	MS	102	2 18 10	2 15 4
Nottingham 3% Irredeemable	MN	97	3 1 10	—
Sheffield Corporation 3½% 1968	JJ	108	3 4 10	2 19 8
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	119	3 7 3	—
Gt. Western Rly. 4½% Debenture	JJ	120½	3 14 8	—
Gt. Western Rly. 5% Debenture	JJ	131½	3 16 1	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	114½	4 7 4	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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